



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

SSO/169837

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 10, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the state agency properly seeks to recover an overissuance of Supplemental Security Income benefits in the amount of \$670.24 for the period of January – August, 2011.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] [REDACTED]

Division of Health Care Access and Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. The Petitioner was receiving State Supplemental Security Income (SSI) in the amount of \$83.78/month for the period of January, 2011 – August, 2011.

3. The State agency received a notice from the Social Security Administration that the Petitioner was placed in a retroactive payment status of N04 (Petitioner's unearned income exceeded the amount allowed under the program).
4. In August, 2010, the Petitioner registered a church ministry as a corporation.
5. The Petitioner did not receive SSA payments. The SSA alleged the Petitioner received income exceeding program limits for the period of January, 2011 – January, 2012.
6. On November 23, 2011, the State agency issued a Notice of State SSI and/or Caretaker Supplement Overpayment to the Petitioner informing her that she was overpaid State SSI benefits in the amount of \$670.24 for the period of January, 2011 – August, 2011. The notice also advised her that since she was currently ineligible for SSI benefits, the agency would not collect the overpayment. It further noted that if she should become eligible for SSI in the future, she would receive a notice that the agency would begin collecting on the overpayment.
7. On October 22, 2015, the state agency issued a Notice of State SSI and/or Caretaker Supplement Overpayment to the Petitioner informing her that she was overpaid State SSI benefits in the amount of \$670.24 for the period of January, 2011 – August, 2011. She was informed that 10% will be withheld from her monthly SSI payments to repay the debt.
8. On October 30, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Effective January 1, 1996, the State of Wisconsin began sending out its state supplemental SSI payments separately from federal SSI payments (they had previously been sent out as one check by the SSA), as mandated by Wis. Stat., §49.77. As part of the change, the state began to perform administrative functions involving the state payments that were done by the SSA for the federal SSI. One such function is the recovery of state SSI overpayments. When the state seeks to recover an overpayment, it must inform the recipient or former recipient of the action, and give that person the right to appeal the decision.

Wis. Admin. Code, §DHS 2.04(3) allows for the department to recoup, at the rate of 10% of the benefit paid, overpayments of incorrectly paid benefits including state SSI, regardless of fault. "Incorrectly paid benefits" means payments in an amount in excess of what the person was eligible to receive during the period in which the payments were made. Admin. Code, §DHS 2.03(5).

Petitioner was eligible for state SSI because she was a federal SSI recipient. See Wis. Stat., §49.77(2)(a)2. Petitioner was informed by the state that she was overpaid because the Social Security Administration (SSA) determined that she was ineligible for federal SSI at some point. Petitioner did not dispute that she did not receive federal SSI during the overpayment period. Petitioner testified that she is working with the SSA to clear up the problem. She has filed an appeal with SSA and that matter is pending.

Based on the evidence currently available, I conclude that the agency properly seeks to recover an overpayment from the Petitioner. However, if the Petitioner is successful in the pending matter with SSA and SSA determines that she was eligible for federal SSI during the period of January, 2011 – August, 2011, the Petitioner should contact the state agency to discontinue its recoupment action and to request that she be reimbursed for any state SSI that she is eligible to receive for that period.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overpayment of state SSI payments for the period of January, 2011 – August, 2011.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of February, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 18, 2016.

Division of Health Care Access and Accountability
State SSI